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# What Brexit means for VAT and Customs Duty



Gerry Myton (left), Harwood Hutton's Head of, VAT and Indirect Taxes, tackles some of the most important questions regarding VAT as the UK heads toward the EU exit door

## **Q: What's the background of VAT?**

**Gerry Myton:** All countries joining the European Economic Community (EEC) had to replace their indirect taxes with VAT. Since its implementation, VAT legislation has evolved largely as a consequence of our membership in the EU and the development of case law precedent from decisions made by the Court of Justice of the European Union (CJEU) and our domestic courts.

## **Q: What will be the immediate impact of any change?**

**GM:** In the short term, it is unlikely much will change. However, over the coming years, it is expected that the UK's departure from the EU will have significant ramifications given that the common VAT system has been a core element of Europe's single market. The principle of a 'single market' has had its emphasis on the free movement of goods and people. This will undoubtedly lead to changes culminating in the removal of simplifications and potentially the requirement to register for VAT in another EU Member State. It all depends on the outcome of the negotiations with the EU. The UK may choose to retain some or all of the measures already incorporated in legislation but after we leave, there will be no obligation to continue to do so.

## **Q: Will leaving the EU mean much more paperwork if you trade within the EU?**

**GM:** The current system incorporates various simplifications designed to facilitate trade and remove the complexities of registering in multiple jurisdictions. A

cornerstone of the EU VAT system has been the free movement of goods to other businesses in the EU. This allows goods to be zero-rated (subject to meeting certain conditions and reporting obligations) which results in limited obligations for a supplier when trading within the EU. Similarly, the movement/supply of people or staff within the EU is based on the same proposition, although in the majority of instances this will require the recipient to account locally in their own Member State. This is referred to as the 'reverse charge mechanism'. Brexit will change the manner in which we trade with the EU, possibly resulting in an increase in reporting and registration obligations.

**Q: Can you explain the distance selling threshold?**

**GM:** Since joining the EU, there have been a number of key developments, not least the principles of establishing the place of supply for VAT purposes. Membership to the EU has allowed supplies to individuals (B2C) to benefit from a distance selling threshold. This allows suppliers to charge UK VAT until reaching the threshold set by each Member State. Suppliers based outside the EU are required to register locally when making such supplies in the EU.

**Q: How do Member States keep track on services supplied electronically?**

**GM:** Suppliers of Electronically Supplied Services (ESS) are required to account for VAT in the Member State in which the services are enjoyed when these are made to private individuals. In 2015, the VAT package imposed this change and others when UK businesses supplied telecommunication, broadcasting and electronic services to consumers. In order to avoid multiple registration obligations, the Mini One Stop Shop (MOSS) was introduced. This key simplification allows the suppliers to register in, for example, the UK and account via an online portal which is administered in the UK and ensures the payment of VAT to the respective Member States.

**Q: Will there be any change to VAT group rule?**

**GM:** Following case law development, the CJEU had ruled that the UK's interpretation of the relevant rules relating to VAT groups was not consistent with the EU law. Accordingly, the UK may choose to adopt or abandon any proposed changes emanating the rulings of the CJEU.

**Q: Will there changes to the TOMS regime?**

**GM:** TOMS – the Tour Operators Margin Scheme – is regarded as one of the most complex areas of VAT legislation. Actually, it is a simplification measure! In a nutshell, TOMS allows tour operators or anyone who supplies materially unaltered travel-related supplies to a traveller to avoid registering for VAT in multiple jurisdictions.

The main complexity of TOMS is the need to identify a principal and agent in the supply. This often requires specialist input which will turn on the contractual relationship of the parties. When accounting for VAT under TOMS, the special rules allow the supplier to avoid registering in other Member States. A disadvantage is that input VAT associated with such supplies is not recoverable and VAT is accounted for on the margin. Following infraction proceedings by the European Commission and Spain (supported by the Czech Republic, France, Poland, Portugal and Finland), wholesale supplies were considered to fall within the scope of TOMS. The UK rules were not amended following the case on the basis that the TOMS regime was expected to be amended. It is generally accepted that TOMS is a complicated minefield. However, with the departure from the EU it will be necessary to consider the implications of potentially having to register in more than one Member State or restructure the business.

**Q: Can we expect customs controls and tariffs on good from the UK?**

**GM:** Following Brexit, it is expected that goods from the UK will be exposed to customs control and tariffs. A key consideration for the UK in negotiations will be to obtain a Free Trade Agreement (FTA) removing the imposition of customs duties. However, much will depend on the political challenges in the years ahead. The recent introduction of the Union Customs Code (UCC) will require further thought and, where necessary, the potential restructuring of current business strategies to ensure the most efficient structure is maintained with the least disruption.

**Q: Where can I go for help reviewing my options?**

**GM:** In the years ahead it is clear Brexit will pose challenges on businesses. But there will also be opportunities. Harwood Hutton is offering a strategic review of business operations with a view to highlighting at an early stage the likely impact on operational efficiencies.



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